Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

October Term, 1979

No. 79-918

In the Matter of
HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Debtors.

ROSE SHUFFMAN, As Executrix of
the Estate of OSCAR SHUFFMAN, Deceased,
Petitioner,

—against—

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

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Printinghouse Press – Bar Ass'n Steno Serv. (Appeals Section) 212-840-1891

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

In the Matter of :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :
Debtors. :

ROSE SHUFFMAN, As Executrix of :
The Estate of OSCAR SHUFFMAN, :
DECEASED, :
Petitioner, :

v. :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :
Respondents. :

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Second Circuit, entered March 6, 1979.

OPINIONS BELOW

The United States Court of Appeals for the Second Circuit wrote no opinion in denying Petitioner's* Motion to Mandate Jurisdiction Back to the District Court and in granting Respondents' Motion to Dismiss Appeal. The Order denying Petitioner's motion and granting Respondents' motion is reprinted at page A-1 of the Appendix hereto.

JURISDICTION

The order of the United States Court of Appeals for the Second Circuit was entered on March 6, 1979. The en banc order of the United States Court of Appeals for the Second Circuit denying the suggestion for en banc rehearing of the March 6, 1979 order was entered on September 17, 1979, and is reprinted at page A-3, infra. The order of the United States Court of Appeals denying rehearing of the March 6, 1979 order was entered on September 17, 1979, and is reprinted at page A-5, infra.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

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*As used herein, "Petitioner" refers to both Rose Shuffman, as Executrix of the Estate of Oscar Shuffman, Deceased and the late Oscar Shuffman.

QUESTIONS PRESENTED

1. Whether under Messinger v. Anderson 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152, United States v. United States Smelting, Refining & Mineral Co., 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 and Dictograph Products Company v. Sonatone Corporation, 230 F.2d 131 (2nd Cir., 1956), reh'g denied, 231 F.2d. 867 (1956), it was an "abuse of discretion" and "breach of duty" for the Court of Appeals to dismiss an appeal on motion without conducting a hearing on the merits citing "law of the case" based upon a previous panel's affirmance of a District Court's affirmance of a bankruptcy appeal, especially after the District Court acknowledged reversible error in its order which was affirmed by the first panel?

2. Whether, under Pepper v. Litton, 295 U.S. 308 (1939) and Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944), the United States Court of Appeals for the Second Circuit perpetrated a fraud on the United States Supreme Court by dismissing an appeal on motion without conducting a hearing on the merits citing a previous panel's affirmance as "law of the case" where, in the interim, the District Court acknowledged reversible error in its order which was affirmed by the first panel?

3. Whether, under Article III of the United States Constitution, the United States Supreme Court has a duty to the people of the United States to honestly administer justice?

4. Whether, under Messinger v. Anderson 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152 and United States v. United States Smelting

Refining & Mineral Co., 339 U.S., 186, 70 S. Ct. 537, 94 L.Ed. 750, the United States Supreme Court has a duty to reverse its own order denying the Petition for a Writ of Certiorari in Case No. 79-178 which left stand the United States Court of Appeals for the Second Circuit's original affirmance of the District Court's order affirming a bankruptcy appeal in view of the District Court's intervening repudiation of its original order as clearly erroneous?

5. Whether, under Rule 19 of the Rules of the Supreme Court of the United States, Messinger v. Anderson, 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152, United States v. United States Smelting, Refining & Mineral Co., 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 Pepper v. Litton, 295 U.S. 308 (1939), and Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944) the United States Supreme Court has as duty to vacate its orders denying petitions for writs of certiorari in Cases Nos. 77-1812 and 79-178, the latter case being the one which had the effect of leaving stand the Court of Appeals affirmance of the repudiated District Court order, in view of the documentation obtained in response to the motion for leave to file petition for a writ of mandamus and petition for a writ of mandamus in Case No. 79-681, which documentation conclusively shows that the United States Court of Appeals for the Second Circuit perpetrated a fraud on the United States Supreme Court and obstructed justice in the former case by allowing an altered and forged order to stand for Supreme Court review?

6. Whether, under Pepper v. Litton, 295 U.S. 308 (1939), the United States Supreme Court must grant certiorari where a failure to do so will result in a fraud and an injustice contrary to the honest administration of justice?

7. Whether under Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944), the United States Court of Appeals for the Secord Circuit breached its duty to honestly administer justice, as part of a continuing criminal conspiracy to obstruct justice and defraud the Petitioner when it denied Petitioner's motion for a remand to the District Court to correct its obvious errors?

8. Whether the Supreme Court of the United States will join in the conspiracy to obstruct justice and cover up of the fix by refusing to correct the clearly erroneous order in violation of its duty and oath?

STATEMENT OF FACTS

On September 13, 1978, Petitioner moved to rehear and reargue the February 22, 1978 Memorandum and Order of the United States District Court affirming a bankruptcy appeal. The District Court, although having acknowledged error on more than one occasion, denied the motion citing lack of jurisdiction in view of the pending appeal in the Court of Appeals, which the District Court stated had ample power to correct any errors.

On December 6, 1978 the United States Court of Appeals for the Second Circuit affirmed the order of the United States District Court for the Southern District of New York (Brieant, J.) which in turn affirmed an order and amended order of the Bankruptcy Court. On March 5, 1979, the Circuit Court denied a Petition for Rehearing En Banc.

After the Per Curiam Opinion was handed down on December 6, 1978, and prior to the filing of the Petition for Rehearing, Petitioner moved in the District Court to vacate its Memorandum and Order which was affirmed by the Per Curiam Opinion. Petitioner based her motion on the District Court's prior acknowledgment that it had no idea that it approved the post-Confirmation commission payments constituting the Bankruptcy Court's amended findings which the Court had said it could not and would not do. The pertinent part of the December 21, 1978 transcript reads as follows:

> MR. SHUFFMAN: Your Honor, under Smith v. Pollen adopted in this circuit by Ryan v. United States

> Lines, this court does have the duty to move in the Court of Appeals for a remand now that it knows its own affirmance was in error.
>
> THE COURT: I don't know that. They tell me that it's not in error. I don't know that there is any action by this court that is in error.
>
> MR. SHUFFMAN: Your Honor stated that you did not take jurisdiction for a period of post-confirmation, yet you ordered the appellant paid monies post-confirmation.
>
> THE COURT: That is what the bankruptcy judge ordered.

The Court of Appeals, however, in its Per Curiam Opinion, affirmed the District Court's clearly erroneous Memorandum and Order, and also repeated that it lacked jurisdiction to approve and would not approve any post-Confirmation commission payments. The pertinent part of the Opinion reads as follows:

> Equally unfounded is appellant's contention that the bankruptcy judge erred in denying priority status to her claim for commissions as an administration expense. The record establishes that appellant has received payment in full on all deliveries made by Rudd to Hartford during the period of arrangement. If appellant believes that she has

not received commissions due her on deliveries made thereafter, her remedy lies not in the bankruptcy court nor on this appeal, but in a plenary action at law. See In re Grodon, 44 F.Supp. 581 (S.D.N.Y. 1942); 9 Collier on Bankruptcy ¶¶8.11, 8.12 (14th ed. 1975).

The Bankruptcy Court's amended findings made without an evidentiary hearing were allegedly based upon debtors' books and records which showed Petitioner as being indebted to the debtors on September 5, 1974, the date of confirmation and discharge. The additional monies "volunteered" by the debtors to cover commissions earned from September 5, 1974 until the end of the calendar year were, however, paid as "administration expenses."

Since the Court of Appeals had not corrected the District Court's error, but had repeated it, Petitioner sought to have the lower Court advise the higher Court of its error at the December 21, 1978 hearing. The District Court again refused, citing lack of jurisdiction.

On March 5, 1979, the Court of Appeals denied the Petition for Rehearing. The next day, another panel granted Respondents' motion to dismiss the appeal, citing the Court's denial of the Petition for Rehearing. The Court also denied Petitioner's motion for a remand to allow the District Court to correct the errors which the Court of Appeals had affirmed.

On October 1, 1979 this Court refused to review the Per Curiam Opinion of the Court of Appeals, and on November 26, 1979, also denied the Petition for Rehearing. The Supreme Court thereby left standing an Opinion which was clearly erroneous, and in effect said one and one is three, when the documentary evidence shows one and one is two.

Also on October 26, 1979, Petitioner filed a Motion for Leave to File a Petition for a Writ of Mandamus and Petition for a Writ of Mandamus, seeking, inter alia, to obtain a transcription of a tape recording of the oral argument on Petitioner's very first motion to remand filed in the Court of Appeals. Petitioner believed that a "CORRECTED" Order of the Court of Appeals, received approximately one week after the original Order, was an altered, back-dated forgery. The Supreme Court refused to review the "CORRECTED" Order, which the District Judge called incomprehensible, in Case No. 77-1812.

Petitioner also charged in her mandamus petition that the Judges of the United States Court of Appeals for the Second Circuit were engaged in an ongoing conspiracy to obstruct justice as part of a cover up of a fix in the Bankruptcy Court, which was also being aided and abetted by several District Court Judges and the United States Attorney. The charges of osbruction of justice and cover up of the fix were first brought to the Supreme Court's attention in Case No. 77-1812.

On November 8, 1979, while the Petition for a Writ of Mandamus was pending in the Supreme Court, Petitioner was provided with a semi-complete transcript of the May 9, 1978 oral argument, when her motion to

obtain the transcript, which had been pending for over a year was finally granted.

The transcript provided by the Court of Appeals clearly shows that the "CORRECTED" Order was an altered, forged document. Since the Court of Appeals was made aware of the issuance of the "CORRECTED" Order on dozens of occasions, and did not advise the Supreme Court of its bogus nature, the lower Court knowingly allowed a false document to stand for Supreme Court review.

On or about November 30, 1979, the Solicitor General of the United States filed a Memorandum for the Federal Respondents in Opposition to the Motion for Leave to File a Petition for a Writ of Mandamus, etc.* containing a semi-complete copy of the May 9, 1978 transcript as an exhibit. Despite the knowledge that a false document was allowed to stand for Supreme Court review, the Solicitor General failed to join in Petitioner's request that the Supreme Court sua sponte vacate its order in Case No. 77-1812, and consider the petition for a writ of certiorari filed therein based upon the legitimate order.

Additional facts detailing the cover up of the fix by the Court of Appeals are presented in Case No. 78-681, and will not be repeated here. Since the facts are supported by documentary evidence, they are irrefutable. The facts clearly show that Petitioner has been defrauded, and that the Supreme Court has been "burglarized".

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*This Petition, Case Docket No. 79-681, is still pending in the Supreme Court.

SUMMARY OF THE ARGUMENT

In Reading Company v. Brown, 88 S.Ct. 1759 (1968), this Court indicated that certiorari will be granted where there is presented an important issue of first impression dealing with the administration of the bankruptcy laws. The case at bar, it is respectfully submitted, falls squarely within this criteria because it deals with:

> (1) the duty of a United States Judge including a Supreme Court Justice, under Article III of the Constitution to correct an erroneous decision even after it has been affirmed or left standing by the denial of a previous petition for a writ of certiorari, in order to prevent a fraud and an injustice;
>
> (2) whether the failure to perform that duty is an "abuse of discretion" and contrary to the honest administration of justice; and
>
> (3) the duty of this Court under Rule 19 of the Rules of the Supreme Court to supervise the workings of the lower federal courts which have deliberately engaged in conduct which obstructs the honest administration of justice in order to prevent a just determination of the cause.

As a result, we respectfully submit, the case at bar justly warrants the granting of this petition, which will undoubtedly clear up ambiguities in the administration of the bankruptcy laws and all laws.

ARGUMENT

Very simply, the District Court Judge whose order was affirmed by the Per Curiam Opinion which this Court refused to review in Case No. 79-178 acknowledged reversible error prior to the filing in this Court.

The Judges of the United States Court of Appeals, who were made aware of the error on a subsequent appeal, refused to exercise their discretion to correct the errors in the first panel's Per Curiam Opinion, and instead chose to dismiss the subsequent appeal on motion without conducting a hearing on the merits, citing the Per Curiam Opinion as "law of the case."

In refusing to review and correct the "clearly erroneous" Opinion of the first panel, the Judges of the second Court of Appeals panel violated their oaths to honestly administer justice, and contributed to a judicially sanctioned fraud.

The Supreme Court of the United States is too important an institution in our system of government to allow its integrity to be emasculated by knowingly and wilfully allowing a litigant to be defrauded as part of a criminal conspiracy to obstruct justice involving members of the Federal Judiciary.

Recently obtained documents released in response to a Motion For Leave to File a Petition for a Writ of Mandamus and Petition for a Writ of Mandamus in related Case No. 79-681 conclusively show that the Judges of the United States Court of Appeals for the Second Circuit perpetrated a fraud on the

United States Supreme Court and the Petitioner herein by allowing a false, forged Order to stand for Supreme Court review in Case No. 77-1812.

Moreover, documents obtained over a year ago conclusively establish that two of the three Judges who participated in the Per Curiam Opinion reviewed by this Court in Case No. 79-178, also participated in a sham, phony "Charade" hearing on a motion which had already been denied. The motion sought the appointment of a special prosecutor to investigate the conspiracy to obstruct justice and cover up of a fix in the Bankruptcy Court, which included allowing the forged order to stand for Supreme Court review.

In addition to the District Court's acknowledgment of error, this Court had before it on the Petition for a Writ of Certiorari in Case No. 79-178 documentary evidence in the form of the Appendix which conclusively showed the Per Curiam Opinion to be clearly erroneous. Unfortunately, the High Court chose to ignore the truth or was misled into denying it.

The bottom line then becomes that either the Justices of this Court were negligent, incompetent or downright dishonest in their treatment of the original Petition for a Writ of Certiorari in Case No. 79-178 which sought a review of the Per Curiam Opinion on the merits. None of the three explanations above are viable for a government of laws, not men.

The fundamental question confronting the Supreme Court, not just in the instant Petition, but going to the core of its legitimacy, is whether or not the Supreme Court of the United States will honestly adjudicate the cases and controversies which ultimately come before it.

This Petition brings the question squarely to the fore. The Supreme Court recently refused to review the original Per Curiam Opinion, despite the knowledge that the decisions of the Courts below were clearly erroneous. Article III of the Constitution dictates a different result.

Given the current of the present world climate a Republic founded upon the law must not flounder for the sake of protecting a few dishonest men who view themselves as above the law. One cannot judge the acts of others unless one's own mistakes are corrected, not covered up.

The Supreme Court now has before it in the form of this Petition the perfect example for demonstrating and exhibiting the supremacy of law over the human fallibility of men. By granting this Petition and then remanding the cause to the lower courts for the correction of their acknowledged errors, the Supreme Court will demonstrate the ultimate dynamics of the law in action.

To deny the Petition, thereby perpetuating a clearly erroneous result, will bring the men who comprise the Court into disrepute. It will erode the foundation upon which the pillars of a free society rest.

If Mr. Justice Brandeis were alive, he would remind his Brother Justices that:

> "The Government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

The Honorable Justices of the Supreme Court have taken a solemn oath to honestly administer justice. Now that the Court is aware of the clearly erroneous result reached below, it must seize this opportunity to correct the resulting fraud and injustice.

The failure to do so will be a signal to every corrupt lawyer and judge in the United States that if you have a problem, and can afford the right connections, don't worry, it will be taken care of.

Such is <u>not</u> the rule of law. It is the rule of corrupt men.

IMPORTANCE OF THIS PETITION

This petition presents a situation where the Court of Appeals for the Second Circuit has so far departed from the accepted and usual course of judicial proceedings, and has so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

Further, this petition presents a situation calling for review of a ruling of a lower court which has been repudiated as being clearly in error by the Judge that reached it, which erroneous ruling has been left standing by a previous denial of a petition for a writ of certiorari.

The word honest and Judge should be synonymous. Judges, or Justices of the Supreme Court, should exercise their sound discretion by correcting errors brought to their attention.

The failure to do so would represent a break-down of law, and mold the Justices as dishonest.

CONCLUSION

Petitioner respectfully prays that the petition for a Writ of Certiorari be granted.

Respectfully submitted,

DAVID K. SHUFFMAN
Attorney for the Petitioner
14 East 60th Street
New York, New York 10022
(212) 755-0006

New York, New York
December 6, 1979

UNITED STATES COURT OF APPEALS

For The

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 6th day of March, one thousand nine hundred and seventy-nine.

Present:

Hon. William H. Mulligan
Hon. Murray I. Gurfein
Hon. Henry F. Werker*

Circuit Judges

In The Matter of	
HARTFORD TEXTILE CORPRATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC., Debtors.	Docket No. 78-5055
ROSE SHUFFMAN, As Executrix of the Estate of OSCAR SHUFFMAN, Appellant,	
-against-	
HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC., Appellees.	

*United States District Judge for the Southern District of New York, sitting by designation.

The facts and issues raised in this appeal are indistinguishable from those adjudicated in this court's recent decision in In re Hartford Textile Corp., Docket Nos. 78-5024, 5032, 5036 and 5045 (Dec. 6, 1978). Appellant's petition for rehearing with suggestion for rehearing en banc in 78-5024 has been filed and has been denied. Accordingly, appellant's motion to mandate jurisdiction to the district court is denied. Appellee's motion to dismiss the instant appeal is granted.

/s/ William H. Mulligan

/s/ Murray I. Gurfein

/s/ Henry F. Werker

UNITED STATES COURT OF APPEALS

For The

SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 17th day of September, one thousand nine hundred and seventy-nine.

BEFORE: HON. IRVING R. KAUFMAN, CH.J.
HON. WILFRED FEINBERG, C.J.
HON. WALTER R. MANSFIELD, C.J.
HON. WILLIAM H. MULLIGAN, C.J.
HON. JAMES L. OAKES, C.J.
HON. WILLIAM H. TIMBERS, C.J.
HON. MURRAY I. GURFEIN, C.J.
HON. ELLSWORTH A. VAN GRAAFEILAND, C.J.
HON. THOMAS J. MESKILL, C.J.
HON. JON O. NEWMAN, C.J.
HON. AMALYA L. KEARSE, C.J.
HON. HENRY F. WERKER, D.J.

In the Matter of

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.,
WELLINGTON PRINT WORKS, INC.,

Debtors.

ROSE SHUFFMAN, As Executrix of the Estate of Oscar Shuffman,

Appellant,

-against-

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.,
WELLINGTON PRINT WORKS, INC.,

Appellees.

A motion for rehearing of the granting of the motion dismissing the appeal herein and the denial of the motion mandating jurisdiction to the district court containing a suggestion that the matter be heard en banc, having been filed herein by counsel for the appellant, and no active judge or judge who was a member of the panel having requested that a poll be taken on said suggestion.

UPON CONSIDERATION thereof, it is

ORDERED that said suggestion be and it thereby is DENIED.

A. DANIEL FUSARO,
Clerk

/s/ Arthur Heller

BY: Arthur Heller,
Deputy Clerk

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 17th day of September, one thousand nine hundred and seventy-nineth.

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In the Matter of :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC., :

:

Debtor. :

----------x

It is hereby ordered that the motion made herein by counsel for the appellant by notice of motion dated March 8, 1979 for rehearing and reargument of the order dated March 6, 1979 be and it hereby is denied.

WILLIAM H. MULLIGAN /s/ William H. Mulligan

MURRAY I. GURFEIN /s/ Murray I. Gurfein

HENRY F. WERKER /s/ Henry F. Werker

CIRCUIT JUDGES

Supreme Court, U. S.
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October Term, 1979

NO. 79-918

In the Matter of
HARTFORD TEXTILE CORPORATION,
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WELLINGTON PRINT WORKS, INC.,

Debtors.

ROSE SHUFFMAN, As Executrix of
the Estate of OSCAR SHUFFMAN, Deceased,

Petitioner,

—against—

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,

Respondents.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

In the Matter of	:
HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,	:
Debtors.	:
ROSE SHUFFMAN, As Executrix of The Estate of OSCAR SHUFFMAN, DECEASED,	:
Petitioner,	:
v.	:
HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC.,	:
Respondents.	:

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, ROSE SHUFFMAN, As Executrix of the Estate of OSCAR SHUFFMAN, Deceased, respectfully files this supplement to her

Petition For Writ of Certiorari To The U.S. Court of Appeals For The Second Circuit for the purpose of providing this Court with a copy of the Memorandum Endorsement and Findings of Fact and Conclusions of Law of the United States District Court (Brieant, J.), which are annexed hereto as exhibits.

The transcript is informative because it shows that the District Court was repeatedly reminded of the errors in its Memorandum and Order which affirmed the Order and Amended Order of the Bankruptcy Court. These errors were repeated by the Court of Appeals in its Per Curiam Opinion which affirmed the District Court's Memorandum and Order, which in turn was left standing by this Court in Case No. 79-178.

Petitioner's recent Motion For Leave to File A Petition For Writ of Mandamus And Petition For A Writ Of Mandamus in related Case No. 79-681 produced additional documentation of the Court of Appeals involvement in the conspiracy to obstruct justice and cover up of a fix in the Bankruptcy Court. These documents were annexed as exhibits to the Solicitor General's Memorandum For The Federal Respondents In Opposition, filed on or about November 30, 1979.

At a recent meeting with various counsel to the Senate Judiciary Committee, authority could not be found for the Solicitor General to appear on behalf of the Federal Respondents. What made the Solicitor General's appearance even more suspect, other than the fact that the

Memorandum was signed by Mr. McCree personally, was that it came at a time when the Criminal Division of the Justice Department was purportedly reviewing certain documentation vis-a-vis the fix and cover up.

This Court would have been better served if the Solicitor General had done his homework, instead of joining in the fraud upon the Petitioner and the Supreme Court.

Respectfully submitted,

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December 27, 1979

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In The Matter of

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.,
WELLINGTON PRINT WORKS, INC.,

Debtors.

ROSE SHUFFMAN, As Executrix of
The Estate of OSCAR SHUFFMAN,

Appellant,

-against-

HARTFORD TEXTILE CORPORATION
OXFORD CHEMICALS, INC.,
WELLINGTON PRINT WORKS, INC.,

Appellees.

Motion Denied. See transcript of hearing this date. So Ordered Brieant, J. 9-13-78.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

IN THE MATTER : 73 B 674,
of : 676
HARTFORD TEXTILE CORPORATION, :
et al.
:
----------x

Before:

HON. CHARLES L. BRIEANT,

District Judge

New York, September 13, 1978
10:00 o'clock a.m.

APPEARANCES:

DAVID K. SHUFFMAN, Esq.,

Attorney for Plaintiff.

WEIL, GOTSHAL & MANGES, Esqs.,

Attorneys for Defendant;

BY: BRUCE R. ZIRINSKY, Esq.,

Of Counsel.

(Open court.)

(Case called, both sides answer "Ready".)

MR. ZIRINSKY: Your Honor, if I may, I would like to file with the Court at this time an affidavit in opposition to the instant motion. It was served yesterday and unfortunately our messenger was unable to make it to the Courthouse before the Clerks' Office closed.

THE COURT: Place it on the Clerk's desk.

MR. ZIRINSKY: Thank you, your Honor.

THE COURT: May I inquire preliminarily what is the status of the matter in the Court of Appeals?

MR. ZIRINSKY: As far as we understood it, there are now four appeals pending.

There are several motions pending before the Court of Appeals, including our motion to consolidate all the appeals, or, alternatively, to dismiss all but the first appeal from this Court's original decision.

THE COURT: Have either of you spoken to the counsel for the Court of Appeals?

MR. ZIRINSKY: We have had several conferences with Mr. Fensterstock and he has attempted to persuade my adversary that he is only delaying in all probability a determination by the Court of Appeals of the principal appeal by the filing of repetitious appeals from orders of this Court denying motions for rehearing as well as other motions filed, including a motion in the Second Circuit for

an order directing the President of the United States to appoint a special prosecutor.

Motions of this nature, your Honor, we are told by Mr. Fensterstock serve no purpose other than to delay a final disposition of the appeal.

THE COURT: Have either attorney asked Mr. Fensterstock to give you a schedule?

MR. SHUFFMAN: Your Honor, if I might, we did have scheduling orders from Mr. Fensterstock and the dates for argument of those motions have passed. There are motions pending in the Court of Appeals which have not as yet been scheduled for oral argument, some of those motions being pending for as long as four months.

THE COURT: Has that situation been called to the attention of Mr. Fensterstock?

MR. SHUFFMAN: Yes, your Honor, it has been called to the attention of the Court.

I received telephone calls from the Deputy Clerk of the Court of Appeals on August 11 and on --

THE COURT: His name, please.

MR. SHUFFMAN: Sarah Piovia, Deuty Clerk, requesting that I bring in additional copies of the motions seeking en banc review by the entire Court of Appeals.

I delivered something in excess of 3000 pages of documents to the Court of Appeals for the consideration of the motions en banc.

This same staff counsel, Mr. Fensterstock, had stated that I was cluttering up the Court's calendar with repetitious motions. This goes back to May 16, 1978 and yet on August 11 and August 15, 1978, the Deputy Clerk of the Court of Appeals requested an additional 12 to 15 copies of all papers filed in the Court of Appeals, I believe on the orders of Chief Judge Irving R. Kaufman.

MR. ZIRINSKY: May I inquire as to the basis of that belief:

THE COURT: Not necessary. I am merely trying to get a picture from each of you what the status of the Court of Appeals matters is because I took this up with you last time you were here, both counsel, and I think what we have here is really a fourth effort to reargue, together with a letter which arrived in my chambers after I had gone on vacation, and the letter from Mr. Shuffman, which was received August 1, contains some comments in it which really don't assist the Court.

There is a particular exhortation in there that this motion was being made -- I quote:

". . . . so that when Judgement Day finally arrived, you . .. " -- meaning myself, the addressee -- . . . "would not have to bear the disgrace of having knowingly approved of the corruption and FIX. I can understand your reluctance to brand Judge Babitt as corrupt, but I have greater difficulty in understanding your own acceptance of having approved of what he did."

Then it goes further to say:

"At this point, my client is reluctant to move once again for rehearing and reargument. If you . . . " -- meaning me --". . . with your previously unblemished reputation for honest and integrity, would not do what was right, she has strong doubts that any other judge in the same Courthouse with Judge Babitt would.

"We will, however, vigorously pursue the pending motions in the Court of Appeals seeking to restore jurisdiction in your court, and the appeals seeking similar relief."

The rest of the letter is going to be docketed in the case and make part of this record, but it is not a very helpful valid means of argument -- it is typical at hominem argument.

It says further:

"As a precaution, we have recently filed a motion returnable August 9, 1978 in front of Judge Babitt, seeking to vacate the orders being appealed and further asking for his disqualification from conducting further proceedings in this case. We have also asked that he resign from the Bench for deliberately falsifying his original opinion.

"We have argued in your court that it you allow the orders of Judge Babitt to stand, you will be sending out a signal to every crooked businessman and corrupt lawyer in this District that if you have a problem and can afford the prices of Weil, Gotshal & Manges . . ." -- that means the attorneys for the debtors in

this case --" . . . " and get in front of the right judge, don't worry, it will be taken care of."

Really, Mr. Shuffman, you wrote and dictated and signed this letter?

MR. SHUFFMAN: Your Honor, there is a previous letter which was sent to the Court, which was part of the record and which was before this Court on March 28, 1978, containing similar language, if not identical language, and this Court then went on to grant and determined to grant reargument, which is the sound exercise of judicial discretion based upon the merits, based upon that statement.

THE COURT: I don't know that any lawyer has ever written to me stating that, as this letter suggests, that I have given up my devotion to causes of honest judicial administration. Really that is what the letter says, doesn't it?

MR. SHUFFMAN: It would appear that in a case involving judicial corruption, such as the corruption we allege in the bankruptcy Court, it is difficult for another brother judge within the same District or within the same Circuit to view the case upon the merits and not be tinged, or have his eyesight colored by the fact that he is ruling upon another brother judge.

I understand the difficulty and apparently the Court of Appeals having the same difficulty as measured by the length of time it has taken for the Court of Appeals to schedule arguments on the motions.

THE COURT: On the last reargument I suggested to both counsel that I thought the interests of justice would be best served if you proceeded promptly to the Court of Appeals.

MR. SHUFFMAN: Your Honor, the Court of Appeals thought that the interests of justice would be best served if we came back here to the District Court and make a motion to reargue --

THE COURT: I have said about all I can say about this matter, Mr. Shuffman. I don't know that I can add anything to what I have said.

When I was a young lawyer nobody would ever write a letter like that to a judge.

MR. SHUFFMAN: That may be, your Honor --

THE COURT: Times have changed.

MR. SHUFFMAN: There are cases where the corruption is so blatant as that which occurred in the courtroom of Bankruptcy Judge Roy Babitt. It is not every day that a bankruptcy judge deliberately falsifies an opinion, changes facts, and then amends those facts and changes them once again with both changes directly contradicting stipulated and agreed facts underlying the prior Court order, without ever holding a hearing. That's something which we have never seen either in this Courthouse.

That may be something new in this District or in this Circuit, that I don't know, but apparently the Court of Appeals -- we are waiting for their decisions.

MR. ZIRINSKY: May I be heard, please?

We have as part of our papers in opposition to this motion requested that the Court grant costs to the appellees in connection with this motion as well as what other over sanctions the Court deems appropriate.

THE COURT: It is a widow being represented by her son.

MR. ZIRINSKY: I understand that, your Honor.

THE COURT: I don't know why you should impose costs on them.

MR. ZIRINSKY: this is the fourth motion for rehearing. He has made a second motion --

THE COURT: He won't take any advice to go to the Court of Appeals.

MR. ZIRINSKY: In the Court of Appeals, in the case of Van Iderstine Company versus RGJ Contracting Company, a 1973 decision written by Judge Chief Kaufman, it was stated and held by the Court that:

"Civil litigation provides an opportunity for private parties to dispose of disputes in an orderly and disciplined fashion. But the open forum which our Courts provide for conflict resolution is not, nor can it ever be, a license to slander and abuse one's adversary."

The Court went on to conclude:

"The attorneys" conduct which we have noted reveals a total lack of self-discipline.

Moreover, we believe Mr. Mangiatordi's behavior particularly merits censure. Since the District Judge did not recommend initiation of disciplinary proceedings in this matter, we forebear from doing so ourselves. Similar conduct, however, will not be tolerated in the future and this opinion should serve as notice to that effect."

Similarly, your Honor, the First, the Seventh Circuit --

THE COURT: I don't care what the Seventh Circuit does.

MR. SHUFFMAN: If I may interject for a moment. On March 28, 1978, on the basis of argument that Bankruptcy Judge Babitt fixed the case to cover up a criminal conspiracy involving the attorneys at Weil, Gotshal & Manges who had falsified documents and committed other violations of Title 18, and that the United States Attorney for the Southern District of New York was obstructing justice to cover up for the currupt attorneys and corrupt judge, this Honorable Court determined to grant reargument based upon those very same arguments that Mr. Zirinsky would now ask the Court to impose costs upon.

I would think that this Court, exercising its jurisdiction --

THE COURT: Let me make it clear from the inception -- I thought I had said this before -- at the time that I ostensibly heard reargument, I thought the District Court had subject matter jurisdiction to do so.

You, as an officer of this Court, did not tell me that you had -- wait -- you didn't tell me that you had already filed a notice of appeal. That was an absence of candor on your part.

If I had known that, I would have saved my time and used that time that was devoted to hearing you to listening to other litigants who were waiting to be heard then as they are waiting to be heard this morning.

Now, if I had known the true situation about the notice of appeal, I would have said to you, "I have no jurisdiction. There is nothing that I can do that the Court of Appeals can't do better. You voluntarily chose to appeal. Go on and prosecute and litigate your appeal."

You won't understand that point. Furthermore, I want to say to you that it is my practice generally to hear reargument. If I have a dissatisfied litigant, I always have the possibility that he might be right. The Courts are human; Courts make mistakes, and probably percentagewise in 90 percent of the motions for reargument that come before me, I hear reargruments; sometimes reargument gives a basis to amplify or change or modify the decision, and sometimes reargument merely results in an affirmance of the prior decision by me, and sometimes I can articulate the reasoning of the decision so as to send the litigants away perhaps less dissatisfied, and sometimes even a controversy can be settled while we are having a reargument hearing -- so it is useful.

My practice is fairly uniform unless it is frivolous or unless it is clearly useless, I usually entertain reargument, particularly when serious contentions are made.

But you came in here under false colors because you pretended that this Court had subject matter jurisdiction to hear the reargument, when in truth and fact, you know, Mr. Shuffman, because you yourself had done it, that you were already in the Court of Appeals. You never told me.

MR. SHUFFMAN: Your Honor has made that statement on two prior occasions, encompassed in two prior orders. If your Honor will take a look at the transcript of March 28, 1978 hearing, your Honor was in fact told that a notice of appeal had been filed and then determined to grant reargument with the knowledge that the notice of appeal had been filed.

I did not know --

THE COURT: If I did I made an awful mistake.

MR. SHUFFMAN: I did not know that the Court at that point had been divested of subject matter jurisdiction.

THE COURT: How long have you been practicing law?

MR. SHUFFMAN: I was in front of Bankruptcy --

THE COURT: How long have you been practicing law?

MR. SHUFFMAN: Approximately 5-1/2 years.

Based upon a ruling by Bankruptcy Judge Babitt, he said that the filing of the notice of appeal does not divest the Court of subject matter jurisdiction. This was on September 28, 1977.

Based upon the statement of Bankruptcy Judge Babitt --

THE COURT: I am adhering to all my prior determinations here. I am admonishing you once again, go, please, to the Court of Appeals.

Now, I am not going to impose costs on you. The only reason I am not imposing costs upon you are twofold:

One, I understand you are representing your mother, and it is a family case. It is not a commercial case like Van Iderstine, which was cited to me by Mr. Zirinsky -- that's number one.

Number two, you have accused me of abandoning a pattern of honesty in your letter and I fear if I imposed costs against you, you might think wrongly and incorrectly that I was reacting unfairly against you because of the rather rotten things that you said in this letter, which arrived in chambers August 1, and not only about me, but about Judge Babitt, and about a law firm which has many cases in this court, and which is well regarded by most members of the Bar, as far as I can find out.

MR. SHUFFMAN: Your Honor, if I might --

THE COURT: Those are the only reasons.

MR. SHUFFMAN: If I might be allowed to point out the inconsistent and apparently conflicting statements made by this Court at the numerous other hearings, you will understand --

THE COURT: Go tell the Court of Appeals about them. If the Court of Appeals thinks that this court erred, the Court of Appeals has ample power to rectify.

MR. SHUFFMAN: Your Honor has stated on ohter occasions that you thought this controversy regarded simply pre-petition debt. You then went on to say that you thought that the case involved pre-petition debt and that a small amount of the money --

THE COURT: Just a moment, Mr. Shuffman --

MR. SHUFFMAN: Your Honor also went on to state that you would not take jurisdiction for a period of post confirmation of the plan of arrangement and that Bankruptcy Judge Babitt's orders did not do so.

However, the money that your Honor ordered paid, and that Bankruptcy Judge Babitt ordered paid, encompassed a period post confirmation of the plan of arrangement.

Your Honor stated that it would misread your memorandum decision to assume that you had taken any jurisdiction --

THE COURT: Did they pay it?

MR. SHUFFMAN: No, sir, we have not been paid yet.

THE COURT: Why didn't you pay it, Mr. Zirinsky?

MR. ZIRINSKY: Your Honor, the order providing for that payment provided that upon the entry of the order, it is my recollection -- the point is that Judge Babitt stayed the execution of that order pending Mr. Shuffman's appeal to this court, and as a consequence we felt constrained not to pay that.

THE COURT: Upon the affirmance that stay would automatically come to an end.

MR. ZIRINSKY: We have chosen to abide by the stay pending --

THE COURT: I don't think there is any stay pending in the Court of Appeals. It seems to me that you would eliminate some of the aura of suspicion and personal criticism in this case if you would send the lady her money.

MR. ZIRINSKY: We have no objection to that.

THE COURT: I thought you ought to do that.

MR. SHUFFMAN: By sending a check on the basis of a fictitious contract, this court and Bankruptcy Judge Babitt will, in fact, be finding an illegal and ultra vires contract entered into by a debtor in possession post Chapter XI, which the Court has specifically labeled --

THE COURT: Tell it to the Court of Appeals, Mr. Shuffman.

MR. SHUFFMAN: The problem we have with the Court of Appeals is that there is case law which states that the Court of Appeals tends to view more favorably a bankruptcy appeal which has at one time been affirmed by a district court judge.

THE COURT: I didn't take the appeal, you did.

MR. SHUFFMAN: We were forced to take the appeal to preserve and protect our rights. All we did was file a notice of appeal. Your Honor did not state on March 28 that you had determined to grant reargument or that you were granting reargument.

THE COURT: I listened to you, though, didn't I?

MR. SHUFFMAN; You entertained oral argument, which is quite a difference.

Your Honor pointed out on June 8, I believe it was June 8, that if in fact you had determined not to --

THE COURT: I listen to everybody, even lawyers who insinutate that I am crooked.

MR. SHUFFMAN: There is a difference --

THE COURT: I have heard enough, Mr. Shuffman.

This record is closed. Motion is denied.

MR. ZIRINSKY: Is that so ordered?

THE COURT: I will so order it by endorsement.

(Time noted: 10:10 a.m.)

* * * *